

Investment in Bank Premises

Other Changes and Activities

Comptroller's Corporate Manual

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This booklet should be used together with other booklets of the *Comptroller's Corporate Manual*. All users of this booklet should refer to the "[General Policies and Procedures](#)" (GPP) booklet for a discussion of general filing instructions and procedures. Users should consult the "[Business Combinations](#)" and "[Branches and Relocations](#)" booklets for additional discussion of filing instructions and procedures, if an investment in bank premises is related to one of those filings.

Background

A national bank may hold property directly or invest in bank premises indirectly (i.e., stocks, bonds, and debentures) through a bank premises holding corporation or subsidiary. A national bank's investment in bank premises may not exceed its capital stock, unless it obtains the OCC's approval. This booklet contains policies and procedures to guide a bank in making a request for an additional investment.

In December 1996, the OCC moved its regulation that deals with investments in bank premises from 12 CFR 7.3100 to 12 CFR 5.37 and clarified the approval process. At the same time, an after-the-fact notice for aggregate investments in bank premises up to 150 percent of the bank's capital and surplus was added to conform with Section 2613 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996.

Definitions

A **bank insider** is a director, executive officer, employee, or principal shareholder (owning 10 percent or more of any class of voting stock) or associate or interest thereof.

Bank premises includes: (1) premises that are owned and occupied (or to be occupied, if under construction) by the bank, its branches, or its consolidated subsidiaries; (2) capitalized leases and leasehold improvements, vaults, and fixed machinery and equipment; (3) remodeling costs to existing premises; (4) real estate acquired and intended, in good faith, for use in future expansion; or (5) parking facilities or lots that are used by bank customers or employees, its branches, and its consolidated subsidiaries.

A **branch** includes any branch bank, branch office, branch agency, additional office, or any branch place of business established by a bank in the United States or its territories at which deposits are received, checks paid, or money lent.

A **business combination** is any merger or consolidation between a bank and one or more depository institutions in which the resulting institution is a bank; acquisition by a bank of all, or substantially all, of the assets of another depository institution; or the assumption by a bank of deposit liabilities of another depository institution.

Capital and surplus means the sum of: (1) a bank's Tier 1 and Tier 2 capital calculated under the OCC's risk-based capital standards in Appendix A to 12 CFR Part 3; plus (2) the balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital to calculate risk-based capital described in (1), as reported in the bank's Consolidated Report of Condition and Income filed under 12 USC 161.

Capital stock means common and preferred stock.

Leasehold improvements include: (1) construction of a building on leased property and capitalization of disbursements for vaults, alterations, and fixed machinery and equipment directly related to leased quarters; and (2) the costs of resurfacing or other improvements directly related to leased parking lots, all of which will become an integral part of the property and revert to the lessor upon expiration of the lease.

Applicability

A bank premises corporation is considered a statutory subsidiary under 12 USC 371d, not an operating subsidiary. Accordingly, no OCC approval is needed for the creation of a subsidiary to hold bank's premises in another corporate entity—except for excess investments. A bank that intends to invest an amount greater than its capital stock in its bank premises, directly or indirectly, must file and obtain the OCC's prior approval.

Exception

Any bank having a composite CAMELS rating of 1 or 2 that also is well capitalized (as defined in 12 CFR 6.4(b)(1)) may make an aggregate investment in bank premises of up to 150 percent of its capital and surplus without prior approval. However, an after-the-fact notice is required (see After-the-Fact Notice section for complete discussion).

Multiple Transactions

When an investment in bank premises request is submitted with an application for a business combination (12 CFR 5.33), branch or branch relocation (12 CFR 5.30), change in main office location (12 CFR 5.40), or another corporate application filed with the OCC, the processing review period for the investment runs concurrently with the OCC's processing of the

principal application. The OCC's decision for the investment and any appropriate conditions will be included in the decision letter for the principal application.

Key Policies

General

A bank may acquire and hold bank premises by any reasonable and prudent means, including ownership in fee, a leasehold estate, or an interest in a cooperative. The bank may hold such property directly or by one or more subsidiaries. A bank premises subsidiary may be organized as a corporation, a partnership, or similar entity (e.g., a limited liability company).

The amount invested in bank premises and fixed assets generally is considered to be a matter within the discretion of bank management. Fixed assets include furniture, fixtures, data processing, and other equipment necessary for the transaction of the bank's business.

Decision Criteria

When analyzing an application for an excess investment in bank premises, the OCC will consider:

- Consistency with safe and sound banking practices and OCC policy.
- Whether any transaction involves bank insiders, and if so, whether the terms are the same as those prevailing at the time for comparable transactions with independent parties.
- The reasonableness of the amount of bank premises and the annual expenditures required to carry them relative to the present total capital structure and the nature and volume of operations.
- The effect of the investment on future earnings.

The OCC will consider denying a request for an additional investment in bank premises when:

- The additional investment would have a material negative effect on earnings, capital, or liquidity.
- The board of directors and management have not demonstrated a reasonable need for the additional investment.

- The additional investment involves an unsafe and unsound transaction with a bank insider.

Special Conditions

The OCC may impose appropriate special conditions for an approval of an additional bank premises investment, if it determines that they are necessary or appropriate to protect the safety and soundness of the bank; to prevent conflicts of interest; or to further other supervisory or policy considerations. Such conditions include, but are not limited to:

- Maintenance of adequate capital levels.
- Development of specific plans to improve earnings.
- Development of specific plans to improve liquidity.
- A statement that the investment in bank premises may not be increased further without prior OCC approval if the resulting total exceeds the bank's capital stock.
- Submission of an appraisal to support the transaction.

The OCC may apply these conditions as "conditions imposed in writing" within the meaning of 12 USC 1818 . The conditions remain in effect after the effective date or consummation date of an approved transaction or activity and continue until the OCC removes them.

Summary of Process

A bank must obtain OCC approval to invest in: (1) bank premises; (2) the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank; or, (3) loans to or on the security of the stock of any such corporation if the aggregate of all such investments and loans, together with any indebtedness incurred by any such corporation that is an affiliate of the bank, will exceed the amount of the bank's capital stock. An approval for a specified amount remains valid up to that amount until the OCC notifies the bank otherwise. The bank will file with the appropriate supervisory office, unless the investment in bank premises is combined with a corporate application for another transaction. (See [Procedures](#) section of this booklet for specific guidance.)

A bank that meets certain criteria may file an after-the-fact notice with the appropriate supervisory office rather than obtain prior approval.

After-the-Fact Notice

In certain instances, a bank that wishes to invest an amount in excess of its capital stock in its bank premises may proceed without seeking prior OCC approval. A bank that has a composite CAMELS 1 or 2 rating may notify the appropriate supervisory office in writing within 30 days following any transaction that increases its bank premises investment in excess of its capital stock, but when aggregated is 150 percent or less than its capital and surplus. The bank must be well capitalized as defined at 12 CFR 6.4(b)(1) and continue to be well capitalized, after the investment or loan is made to qualify for the after-the-fact notice process. The bank should include in its notice a description of the bank's investment or loan.

A bank must notify the OCC each time a purchase raises the bank premises investment above the capital stock amount but is within the 150 percent safe harbor amount.

Standard Processing

A bank must submit a written application to the appropriate supervisory office to request approval to exceed the amount of its capital stock. If the filing is combined with a corporate application and received in Licensing, the Licensing staff will forward the bank premises portion to the appropriate supervisory office for decision.

A bank may choose to apply on either a transaction-by-transaction or a specified amount basis that is designed to accommodate future transactions. The bank should provide:

- A description of the present bank premises investment.
- The amount of the investment that the bank intends to make and whether it involves a transaction with an insider.
- The amount by which the investment or the specified amount will exceed its capital stock.
- The business reason for the requested level of investment.

The bank also may wish to discuss its present annual and projected future earnings.

A bank's request for a higher specified amount should relate to its business reason or strategic plan. A bank may file a single application for a specified amount that will establish an approved amount of bank premises and eliminate the need to file repeated after-the-fact notices for a series of

premises investments. This specified amount remains valid until the OCC notifies the bank otherwise.

Timing Considerations

The OCC considers an application approved as of the 30th day after the filing is received, unless it notifies the bank prior to that date that the filing presents a significant supervisory or compliance concern or raises a significant legal or policy issue.

Specific Requirements

Investment in Real Estate

A national bank may invest in real estate necessary for the transaction of its business. This real estate includes:

- Premises that are owned or occupied (or to be occupied, if under construction) by the bank, its branches, or its consolidated subsidiaries.
- Real estate acquired and intended, in good faith, for use in future expansion.
- Parking facilities used by customers or employees of the bank, its branches, and its consolidated subsidiaries.
- Residential property for the use of bank officers or employees who are: (1) located in remote areas in which suitable housing at a reasonable price is often unavailable; or (2) temporarily assigned to a foreign country, including foreign nationals temporarily assigned to the United States.
- Property for the use of bank officers, employees, or customers, or for the temporary lodging of such persons in areas in which suitable commercial lodging is often unavailable, provided that the purchase and operation of the property qualifies as a deductible business expense for federal tax purposes.

In addition, to facilitate the efficient use of bank personnel, a bank may purchase the residence of an employee who has been transferred to another area to spare the employee a loss in the prevailing real estate market. The bank must arrange for early divestment of the property's title (12 CFR 7.1000(d)(2)).

Transactions with Insiders

Examples of bank insider transactions include: (1) a direct purchase of real estate from an insider; (2) leasing property that is owned, directly or indirectly, by an insider; (3) transactions in which the proceeds benefit, or are transferred to, an insider; and, (4) situations in which an insider will benefit from the transaction (e.g., an insider owns an adjacent parking facility or provides janitorial or other services to the property). If the investment involves a bank insider, the bank must provide additional information about the terms of the transaction. For example:

- The name of the bank insider and his/her relationship to the bank.
- A description of how the bank determined the fairness of the terms.
- A copy of the board of directors' resolution approving the transaction that reflects the bank insider's abstention from the discussion and voting. The OCC expects full disclosure to all directors of any material arrangement with an insider.
- A copy of the executed lease or purchase agreement (that should be contingent upon OCC approval).
- An accounting determination of whether a lease should be capitalized.
- A justification of the expenditure.
- A copy of an independent appraisal, survey, or other evidence of the fairness of the transaction.

Accounting

Depreciation

A bank's total investment in bank premises is calculated using net book value that does not include accumulated depreciation. Accumulated depreciation is deducted when calculating the total investment for 12 USC 371d purposes.

Capitalized Leases

FASB Statement No. 13 states that a lease must be accounted for as a capital lease, if any one of the following conditions is met:

- Ownership of the property is transferred automatically to the lessee at the end of the lease term.
- The lease contains a bargain purchase option.

- The lease term represents at least 75 percent of the estimated economic life of the lease property.
- The present value of the minimum lease payments at the beginning of the lease term is 90 percent or more of the fair value of the leased property to the lessor at the inception of the lease, less any related investment tax credit retained by and expected to be realized by the lessor.

If none of those conditions are present, the lease is accounted for as an operating lease, and lease payments are expensed when incurred. Detailed information on lease accounting is included in the call report instructions.

Municipal Parking Lots

Expenditures toward the acquisition and operation of municipal parking lots ordinarily represent a business expense to be charged off rather than treated as an investment in bank premises.

Appraisal

The sale, lease, purchase, investment in, or exchange of bank premises involving real property is considered a real estate-related transaction under 12 CFR 34.42(l). Unless specifically exempted in 12 CFR 34.43(a), such transactions require a conforming appraisal.

Options to Purchase

An unexercised option to purchase bank premises or stock in a corporation holding bank premises is not an investment in bank premises. A bank must receive OCC approval to exercise the option, if its price and the other investments in bank premises would exceed the amount of capital stock.

After-the-Fact Notice

Date

Examiner-in-charge, District
Comptroller of the Currency
Address
City, State, ZIP Code

Re: Investment in Bank Premises, Bank Charter Number

Dear Examiner:

Pursuant to 12 CFR 5.37(d)(3), we are providing after-the-fact notice that we increased our aggregate investment in bank premises on *(date)*.

The new investment in bank premises of *\$(amount)* was to *(describe investment)*.

The resulting total investment in bank premises, including any stock, bonds, debentures, or other such obligations of any corporation holding the premises or any loans to or upon the security of the stock of any such corporation, is *\$(amount)*. As of the date of the new investment, the bank's capital and surplus totaled *\$(amount)*.

The bank was well capitalized prior to the investment and continues to be well capitalized as defined in 12 CFR part 6 after the investment was made.

The transaction (did not) involve(d) a bank insider. *(If the transaction involved a bank insider, describe how the bank determined the fairness of the terms.)*

If you have any questions, please contact *(name, address, city, state, ZIP Code)* at *(telephone number)*.

Sincerely,

) Signature)

Name and Title

Application for Increase

Date

Licensing Manager or Examiner-in-charge, District
Comptroller of the Currency
Address
City, State, ZIP Code

Re: Investment in Bank Premises, Bank Charter Number

Dear Licensing Manager or Examiner:

We (*bank name*) request approval for an additional investment in bank premises (or *the specified amount for bank premises*) of \$(*amount*). This investment will be made to (*describe business purpose or strategy*).

Our present total investment in bank premises is \$(*amount*), representing (*amount*) percent of our capital stock. After the investment, this percentage will be (*amount*). (*Specify any dollar amount requested, its reasonableness to the business reason, and provide the percentage such amount represents to capital stock, surplus, and undivided profits.*)

[Describe this additional investment's effect on the bank's condition and earnings, if significant.]

The transaction does (does not) involve a bank insider. (*If the transaction involves a bank insider, describe how the bank determined the fairness of the terms.*)

We have enclosed a check payable to the Comptroller of the Currency for the filing fee in accordance with the current annual "[Notice of the Comptroller of the Currency Fees](#)."

We anticipate settlement on this investment on (date), and we would appreciate action on this request by (date). If you have any questions, please contact (*name, address, city, state, ZIP Code*) at (*telephone number*)(*FAX number*).

Sincerely,

) Signature)

Name and Title

Enclosure

After-the-Fact Notice

Supervisory Staff

1. Refers a bank that requests instructions to this booklet and any related specialty booklet of the *Comptroller's Corporate Manual*.

Filing the Notice

Bank

2. Completes and submits an after-the-fact notice to the appropriate supervisory office. The notice contains:
 - A description of the bank's investment or loan in bank premises.
 - A verification of well-capitalized status before and after the investment.

Review

Supervisory Staff

3. Reviews the notice and any other relevant information about the bank and verifies that:
 - It has a composite CAMELS rating of 1 or 2.
 - It contains the information stated in step 2.
 - The transaction is consistent with safe and sound banking practices and OCC policy.
 - The transaction does not involve a bank insider.
4. If the notice is insufficient or the bank is not qualified, requests the necessary or missing information from the bank and includes a specific due date, or requests the bank to file an application.
5. Reviews any additional information.

6. Enters an Other Significant Event (OSE) comment in the Supervisory Monitoring System.

Close Out

7. Forwards the notice to the bank's examiner-in-charge and national filing system file no. 5.

Application Inquiry

Licensing or Supervisory Staff

1. Refers a bank that requests instructions to this booklet and any related specialty booklet of the *Comptroller's Corporate Manual*.

Filing the Application

Bank

2. Completes and submits an application to the appropriate supervisory office. The application contains:
 - A description of the present bank premises investment.
 - The amount by which the aggregate investment or specified amount will exceed the bank's capital stock.
 - The investment in bank premises that it intends to make and the business reason for the level of investment or loan requested.
 - Any specified dollar amount requested and its reasonableness to the business reason or strategy.
 - If applicable, information about any bank insiders involved in the transaction.
3. If the transaction is combined with a corporate application, such as branch or business combination filing, files the bank premises portion with the appropriate supervisory office.

Licensing Staff

4. If a bank premises transaction is included in a corporate filing, refers the bank premises request to the supervisory staff for decision.

Review

Supervisory Staff

5. Determines if the application will be considered with a related corporate filing, such as business combination or branch.

- If so, verifies with the Licensing staff the application's time frame for decision.
 - If not, supervisory staff begins review.
6. Sends an acknowledgment letter within five business days of receipt.
 7. Reviews the application and any other relevant information about the bank and verifies that:
 - It contains the required application criteria described in step 2.
 - The proposal is feasible for the bank's size, services, projected earnings, and target market.
 - The proposal is consistent with safe and sound banking practices and OCC policy.
 - Any arrangements or transactions involving bank insiders are made on substantially the same terms as those prevailing at the time for comparable transactions with independent parties (review appraisal or appraiser's statement of fairness).
 8. If related to a corporate application, within five business days of receipt, solicits comments from the Licensing staff.
 9. If the application is insufficient, requests the necessary or missing information from the bank and includes a specific due date.
 10. Reviews any additional information.

Decision

11. Prepares the decision letter and decides the application under delegated authority.
12. Documents the analysis and decision in an Other Significant Event (OSE) comment in the Supervisory Monitoring System.
13. If combined with a corporate application, notifies the Licensing staff of decision and provides a copy of the decision letter.
14. Sends the bank the decision letter.

Close Out

15. Forwards the bank's request and the decision letter to the national filing system file no. 5.

Investment in Bank Premises

References

Bank Ownership of Property

Law	12 USC 29
Regulation	12 CFR 7.1000

Branches

Law	12 USC 36
Regulation	12 CFR 5.30

Business Combinations

Laws	12 USC 24(Seventh), 214a, 215, 215a, 215c, 1828(c), 1831o
Regulation	12 CFR 5.33

Capital Requirements

Laws	12 USC 3907, 3909
Regulations	12 CFR 3, 5.46

Decisions

Regulation	12 CFR 5.13
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Insider Activities

Laws	12 USC 375, 375a, 375b, 376
Regulations	12 CFR 31, 215
Publication	<i>Comptroller's Handbook</i> , "Insider Activities"

Investment in Bank Premises

Law	12 USC 371d
Regulation	12 CFR 5.37

Sharing Space and Employees

Regulation	12 CFR 7.3001
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